

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

JOSE WILLIAM ESCOBAR PACHECO,)	
Institutional ID No. 50570-056,)	
)	
Plaintiff,)	
)	
V.)	CIVIL ACTION NO.
)	6:08-CV-073-C
CHARLES FELTS, Warden, <i>et al.</i> ,)	ECF
)	
Defendants.)	

ORDER

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendants Warden Charles Felts; Chief of Security Gonzalez; Captain Waddell; Medical Administrator Wagner; Nurse Practitioner Kelly; Correctional Officer Villareal, Jr.; Correctional Officer Chavez; Correctional Officer Chavez, Jr.; Unit Manager Laxson; and Case Manager Garcia, all employees of the Eden Detention Center, as well as Harvey Lappin, Director of the Federal Bureau of Prisons, and Michael Mukasey, Attorney General of the United States.¹ Plaintiff alleges that Defendants subjected him to cruel and unusual punishment in the form of excessive use of force, deliberate indifference to his medical needs, and deliberate indifference to his health and safety.

The complaint was transferred to the docket of the United States Magistrate Judge, who held a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985) on February 26, 2009. Plaintiff did not consent to proceed before the United States Magistrate

¹This Court treats the complaint as filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). See *Stephenson v. Reno*, 28 F.3d 26, 26 n. 1 (5th Cir. 1994).

Judge. Pursuant to this Court's Order entered on November 21, 2008, the Magistrate Judge entered findings of fact, conclusions of law, and recommendation for disposition on April 23, 2009 (hereinafter the "Report and Recommendation"). No objections were filed.

This Court has made an independent review of the record in this case and determines that the findings and conclusions are correct, with one exception: although the Report and Recommendation mentions Plaintiff's allegations that Defendant Waddell subjected him to cruel and unusual punishment in the form of excessive use of force when he kicked and hit him while Plaintiff was being held on the ground on November 15, 2007, Defendant Waddell was omitted from the recommendation that the officers involved in the November 15 incident be ordered to answer or otherwise plead to said allegations. After a thorough review of the record, this Court is of the opinion that Defendant Waddell should be ordered to answer or otherwise plead to Plaintiff's claims that he was subjected to an excessive use of force on November 15, 2007. Otherwise, this Court finds that the Magistrate Judge's findings, conclusions and recommendation should be accepted and adopted.

It is therefore ORDERED:

(1) Plaintiff's claims against the Defendants in their individual or supervisory capacities that he was subjected to cruel and unusual punishment in the form of deliberate indifference to his health and safety and deliberate indifference to his serious medical needs are **dismissed with prejudice.**

(2) Plaintiff's claims of cruel and unusual punishment in the form of an excessive use of force against Defendants Felts and Gonzalez are **dismissed with prejudice.**

(3) Plaintiff's claims against any of the Defendants in his or her official capacity are **dismissed with prejudice.**

(4) Defendants Felts, Garcia, Gonzalez, Lappin, Laxson, Wagner, Kelly, and Mukasey are **dismissed from this case.**

(5) The caption of this case shall be changed to reflect that Defendants Waddell, Chavez, Chavez, Jr., and Villareal, Jr. are the only remaining Defendants.

(6) The Clerk of the Court is directed to complete form USM-285 and a summons for the following named Defendants:

- (a) Name: Captain Waddell
Last Known Address: Eden Detention Center
Highway 87 East
Eden, TX 76837-0605
- (b) Name: Correctional Officer Chavez
Last Known Address: Eden Detention Center
Highway 87 East
Eden, TX 76837-0605
- (c) Name: Correctional Officer Chavez, Jr.
Last Known Address: Eden Detention Center
Highway 87 East
Eden, TX 76837-0605
- (d) Name: Correctional Officer Villareal, Jr.
Last Known Address: Eden Detention Center
Highway 87 East
Eden, TX 76837-0605

(7) The Clerk shall provide form USM-285, the completed summons, a copy of Plaintiff's Complaint, a copy of the Report and Recommendation of the United States Magistrate Judge (Doc. 11), and a copy of this Order to the United States Marshal for each of the above named Defendants.

(8) The United States Marshal shall personally serve process and a copy of this Order upon the above-named Defendants. In the event Defendants are no longer associated with the Eden Detention Center, the United States Marshal shall command all necessary assistance from the Eden Detention Center to execute this Order.

(9) **Within ten (10) days after personal service is effected, the United States Marshal shall file a return of service as to the Defendant served and the costs incurred in effecting service on such Defendant.**

(10) Defendants Waddell, Chavez, Chavez, Jr., and Villareal shall file written answers or responses to Plaintiff's claims that Defendants subjected him to cruel and unusual punishment in the form of excessive use of force on November 15, 2007. within thirty (30) days after service.


(11) Plaintiff's motion for a restraining order filed February 18, 2009 (Doc. 8) is **denied.**

(12) Any pending motions are **denied.**

Judgment shall be entered accordingly.

A copy of this Order shall be mailed to Plaintiff and to all attorneys of record.

Dated September 17, 2009.


SAM R. CUMMINGS
UNITED STATES DISTRICT COURT